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FAX COVER SHEET TO: Fax: 803.734.5167

TO: The Honorable Nikki R. Haley, Office of the Governor
Cover Sheet pg 1
Letter pg 2
Attachment (10 pgs) pg 3 to pg 12

FROM: William Busser 803-641-1851

William Busser
Aiken, SC
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803-641-1851
September 18, 2014

Attachment: September 18, 2014 Letter from Dione' Carroll to Jim Holly, Esquire,
South Carolina Transportation Infrastructure Bank ((SCTIB)

The Honorable Nikki R. Haley, Office of the Governor

A group of concerned citizens has retained Carroll Law Offices, P.A., 135 Chesterfield St. S., Aiken, SC 29801 to represent us in stopping the wasteful spending of taxpayers' money on Hitchcock Parkway. The attachment gives the reasons we believe the current City of Aiken, SC ARTS and SCDOT concept of transforming Hitchcock Parkway into an unneeded costly and destructive 'Freeway' is fatally flawed. Per the letter to the SCTIB, we are asking the SCTIB to remove funding for HP. We want to inform you of this misuse of taxpayers' money because Hitchcock Parkway is one of the projects in the SC ARTS TIP that you must approve. A state level review of this project will help with the accountability and transparency of South Carolina road fund use.



William Busser

Cc: Carroll Law Offices, P.A.,
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CARROLL

LAW OFFICES, P.A.

September 18, 2014

(VIA E-MAIL at setibank@gmail.com and U.S. MAIL)

Mr. Jim Holly, Esquire
South Carolina Transportation Infrastructure Bank
955 Park Street, Room 120B
Columbia, SC 29201

Subject: Hitchcock Parkway -- Aiken

Selected Relevant Documents:

A. July 11, 2014, Letter from Dione Carroll to Jim Holley, et. al., *Re: Comments in Opposition to Hitchcock Parkway "Widening" Project and Comments on Related June 4, 2014, letter from City of Aiken Mayor to Aiken County Commission Chairman Regarding Same.*

B. *Intergovernmental Agreement for Project Consisting of Hitchcock Parkway Widening, University Parkway Widening, and Dougherty Road and Whiskey Road Intersection Improvements in City of Aiken, South Carolina* (Undated, signed by Aiken Mayor Fred Cavanaugh, March 11, 2013, unexecuted by South Carolina Transportation Infrastructure Bank -- SCTIB) -- Hereinafter referred to as the "City Agreement."

C. *Interstate 20/SRS Access Improvements Proposal* (Undated, Submitted to SCTIB by Aiken Mayor Fred Cavanaugh and Aiken County Council Chairman Ronnie Young) -- Hereinafter referred to as the "City Proposal."

Dear Mr. Holley:

Document A, referenced above, was sent to you on July 11, 2014. It summarizes of some of the reasons why we believe the current SC-DOT concept of transforming Hitchcock Parkway into an unneeded, costly and destructive "Freeway" is fatally flawed. It also explains why there is so much citizen opposition, including opposition from the significant group of citizens who have engaged me to represent their interests in this matter. If you have not already, I encourage you to give that letter due

to be addressed:

1. Project need justification offered in City of Aiken Proposal is invalid.

Document C referenced above (City Proposal -- undated, and apparently considered to be both a proposal and an application) was submitted to SCTIB sometime in 2007 or 2008. The request was for SCTIB funding to widen Hitchcock Parkway. The title of the document suggests the argued justification for the project, an imagined need to improve the access from Interstate 20 to SRS (the Savannah River Site, owned and operated by the U.S. Department of Energy). This justification has been repeated numerous times in the intervening years.

The facts support the reality that there is no current, legitimate and verifiable need for the project. Funding (including from SCTIB) was secured on the incorrect premise that an improved access from I-20 to the Savannah River Site (SRS) is necessary. The recent spending of hundreds of millions of dollars on the Palmetto Parkway, and the U.S Route 1-Rudy Mason Parkway-East Pine Log Road corridor was ostensibly done to improve access. (See attached map.)

Furthermore, the huge reduction (reported as 60% + and growing) in the SRS (by far the largest employer in the region) work force and impacts on associated households (estimated to have affected 48,000 people) also undermines the alleged-need argument. This belief is supported by the City's latest *Level of Service Report* that documents year-after-year decreasing traffic volumes on IIP.

Curiously, the attractive roadway depicted on the cover of the City Proposal is a good representation of the appearance of IIP today. Regrettably, if the proposed Freeway is constructed, the aesthetically appealing aspects of the existing corridor would inevitably altered, and given what we know about the project, would be expected to be destroyed to the loss of the Aiken community.

2. Project magnitude does not meet the threshold required for SCTIB funding.

The SCTIB maintains a funding system for major transportation infrastructure projects in South Carolina. §11-43-120, SC Code Ann. SCTIB has powers enumerated in section 11-43-150, SC Code Ann. Projects selected for financing agreements or other financial assistance must be "eligible projects" as defined by section 11-43-130(6) and must be selected as "qualified projects" by the SCTIB Board of Directors. See §11-43-130(6); (8) and (12), SC Code Ann. The proposed Freeway is not a major project as it has an estimated cost of less than one-half of \$100M, the minimum threshold established by SCTIB for consideration and assistance. Furthermore, given the likely detrimental environmental impacts by the project and inadequate need, it does not support the public purpose requirements for qualified, eligible projects.

The grouping of proposed work on various roadways and labeling this grouping "component projects," is a thinly veiled attempt to circumvent the major project requirement established for SCTIB grants and loans (see Ref. B). This impermissible grouping of projects does not cure the fact that the Hitchcock Parkway project fails to exceed the major project hurdle.

3. SCDOT cost estimates have a history of poor reliability.

Planning documents produced in 2004 by the Augusta Regional Transportation Study (ARTS), the designated Metropolitan Planning Organization (MPO), provided for a \$2M IIP project that involved the addition of passing lanes. From there, the project scope has exploded, and cost estimates have sky-rocketed.

Incredibly, comprehensive public records requests and other requests for information made to the involved public entities have failed to reveal a cognizable document trail of how this increase in project came to be. The inadequate available documentation alone should be ample evidence that the development, management and cost projections for the IIP project are out of control.

A recent evaluation by knowledgeable engineering and construction specialists made at our request, based on the available information, suggests the final cost of the Freeway proposal could easily exceed \$50M, and that, accordingly, there could be a funding shortfall on the order of \$25M. The latest known SCDOT estimate is \$34.6M. Unfortunately, requests to SCDOT to provide cost estimate and schedule data have not yet revealed comprehensive information relating to the project.

SCDOT estimates have been unreliable before. The recent Silver Bluff Road-widening provides an example. The much less complex, much less costly and much less destructive project is within a couple of miles of IIP. Over a period of two years, SCDOT estimates for the Silver Bluff Road project increased by more than 60 percent.

Under the circumstances, as we understand them, and described above, it is only reasonable to expect an enormous IIP financial shortfall for which there is no identified funding source. And, in this instance, a partially funded project is much more problematic than an unfunded project. The only reasonable conclusion is that the project will need additional money (as yet neither identified nor allocated) from the taxpayers in order to be completed.

4. Estimated project cost will substantially exceed amount stipulated in the City Agreement.

The City Agreement (Document Ref. B), to our knowledge unsigned by the SCTTB, stipulates a total cost for the IIP project, and two other projects, of \$28.9M. As previously described, the cost of the IIP project alone is likely to exceed \$50M. This represents a factual error in the Agreement that is the basis for SCTTB funding of the project.

5. City of Aiken has not demonstrated satisfactory project execution capabilities.

Ref. B indicates in Sections 5.1 and 5.4 that the City will have direct and comprehensive responsibility for the management, design, procurement and construction functions for the project. The City is not qualified for this requirement.

Two recent examples calling into question the City's qualifications to manage a major project like the Hitchcock Parkway project include the following: (1) the "ADPS Training Grounds" project ended up costing 800% more than its estimated cost of \$100K; and (2) the "Dougherty Connector Road" project, when it was finally "completed," overran its \$700K estimated cost by 400%. And, the connector road did not even make the intended connection, because agreement with all involved parties was not

secured before the project was begun. So, if it is ever completed, more tax revenue would be expected to be required.

It is not reasonable to believe the City possesses the skills and competencies necessary to implement the IIP project, which is much larger and much more complex than the foregoing examples. It is noteworthy that the proposed City Agreement states in Article I that the project is approximately 5.7 miles in length. To the best of our understanding, the IIP project currently contemplated is 4.9 miles long. This represents another inaccuracy in the proposed agreement and raises concerns about whether there is a complete understanding by the parties of the anticipated project.

6. Ill-advised segmentation of project due to inadequate funding.

It appears that because there is not sufficient funding available (by a wide margin) to design and construct the Freeway, the City and SCDOT propose to "phase" the work, *i.e.*, build the **first segment**, and then, many years later (after 2020), when and if funding becomes available, build the **second segment**. There also does not appear to be an intention to analyze under NEPA all the environmental aspects of all segments of the overall project corridor plan. This is a classic case of "segmentation," a practice that is unacceptable in the absence of logical termini and independent utility, which the IIP project does not have.

The IIP project termini appear arbitrary and not logical. This is evidenced by the fact that the major intersection improvements that are planned for one end of the Freeway have been stripped out as a **third segment**. We suppose this was done to make the real Freeway cost appear less than it truly is. So, in reality, SCTIB is being asked to provide funding for one piece of a three-piece Freeway; which, taken together are part of a larger scheme (comprised of other segments or "component projects") with a very distant, and perhaps speculative, completion date.

It's not difficult to imagine a strategy behind such a methodology. The thought is, "We'll get less than one-half of the Freeway built, and then the funding agencies will be compelled to come up with the tax revenue to build the remainder." The Freeway is already considered by many to be a "road to nowhere," since substantially whatever traffic "congestion" exists is currently found at the two ends of IIP and, therefore, occurs outside the boundaries of the current Freeway project. We have also been advised that building the current segment will create level of service issues at the segment terminus, meaning the project doesn't have logical termini and also does not have independent utility. Building less than half a Freeway compounds rather than corrects perceived transportation issues.

It is also our contention that this segmentation of the project, because of the anticipated many years that will elapse between the three segments, and the uncertainty surrounding current and future funding for same, constitutes "abandonment" as described in Ref. B. It is our belief that the City Agreement is already inaccurate and that City will be unable to be in compliance with the terms of the Ref. B City Agreement, before it is even executed.

7. Claims of citizen support not substantiated.

A letter from Aiken Mayor Cavanaugh to SCTIB Chairman Leonard, dated 08-14-2012 contains the following statements: *"...SCTIB Board Members correctly recognized that we have committed \$4,000,000 in Local Option Sales Tax revenues to this ...widening project. Aiken City residents voted in*

favor of it...County voters supported it..."

Proponents of the Freeway have often referred to the one-percent-local option-sales tax proposition that was on a November 2010 ballot as "evidence" that Aiken citizens are wholeheartedly in favor of the Freeway. This is a misleading representation. The reference to HP contained in the ballot was precisely: **"\$4M for widening of Hitchcock Parkway."** This is the **entire** description. This was buried in a list of some 275 projects (the enabling ordinance ran to 23 pages). There is no mention of a four/live lane Freeway, with one million square feet of new pavement, resulting in 31 million gallons of additional runoff each year, in a receiving area containing important wetlands and historic-preservation-protected land with significant existing erosion problems.

A more egregious omission is the fact that \$4 million is less than 10% of the probable Freeway cost. A reasonable voter, had that voter actually examined this particular entry among the other 274, would likely have envisioned a sensible and cost-effective widening of existing lanes, addition of turning lanes, coordination of traffic signals, etc. -- not the outrageously costly, destructive and unneeded Freeway that SCTTB is being asked to fund.

As reported by Aiken's Engineering and Utilities Department Director: *"Several hundred people were in attendance [at a SCDOT HP Public Information Meeting.] Most residents attending the meeting were opposed to the project [the Freeway], but agree something [cost-effective, non-destructive improvements] needs to be done."*

Tax collections related to the one-percent-local-option-sales-tax have been running significantly less than expected -- as much as 20% less. This is consistent with the recently-reported no-growth or negative-growth in the population of Aiken, as well as other factors. Surely, building the Freeway is not the highest and best use of whatever scarce tax revenue is available. There are so many real needs that should be addressed, including proper maintenance of existing roads, bridges and other taxpayer-funded public facilities.

8. Environmental degradation.

Hitchcock Woods (the "Woods") is a Local, State and National treasure (among the largest urban forests in the Nation, about 2.5 times the size of New York City's Central Park). The entire western boundary of the Woods is right next to HP. The Woods is used and loved enthusiastically by Aiken's citizens, visitors, and conservationists alike. It includes numerous archeological sites and is a planned mitigation site for the red-cockaded woodpecker (RCW), an important endangered species protected under the Endangered Species Act. The RCW was the focus of conservation efforts even before the passing of the Endangered Species Act in 1970.

In a 2012 Advance Project Planning Report, a wildlife biologist from the US Fish & Wildlife Service provided this warning: *"Several RCW colonies are located in the vicinity of this project (HP). As the roadway is to be widened, there is a potential to impact foraging areas for known groups of RCW as well as new groups that may not be shown in the Heritage Trust Database. Further, the roadway will spur economic development in the immediate vicinity and poses additional threats to the RCW through loss of nesting and foraging habitat. Project planning must include an assessment of indirect and cumulative impacts to this species as well as surrounding natural resources."*

In addition to its beauty and high ecological value, the Woods is an equestrian, hiking and naturalist paradise that attracts many visitors, as well as part-time and full-time residents, who participate in all manner of equestrian sports and other outdoor activities. Impacts from the Freeway project threaten the Woods and its treasures.

Beyond Hitchcock Woods, scores of residential, religious-use, recreational, school properties and valuable and vulnerable wetlands will be adversely impacted by the Freeway. These impacts include anticipated eminent domain takings of private property and attendant severely diminished value of residences and available uses. Truncated lots, retaining walls, sound barriers, traffic noise and pollution, and the close proximity of heat-absorbing new pavement will contribute to reduction in property values.

Moving forward on a preordained project without adequate consideration and mitigation of the impacts, as required by the National Environmental Policy Act (NEPA), the Clean Water Act and the Endangered Species Act, is a perilous course, indeed, and would demonstrate very poor judgment. The implications of any project activity must be considered and addressed before moving any farther down this dangerous path, with a project for which there is no adequately demonstrated need. Proper evaluation, consistent with applicable law, would certainly preclude a Freeway-like decimation of the currently tree-lined IIP.

Violation of basic National Environmental Policy Act (NEPA) requirements has apparently already occurred, or at the very least is inevitable under the current course of action. Hundreds of thousands of dollars are being spent (soon to become millions of dollars in sunk costs) on the detailed design of a four/five lane Freeway. Whatever NEPA evaluations are contemplated are incomplete, and nothing of a preliminary nature has been released.

NEPA requires agencies to follow a particular decisionmaking *process*. For example, Environmental Assessments and Environmental Impact Statements must be completed "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b); *see also id.* § 1500.1(c) (stating that "the NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences"). This includes funding decisions involving federal funds.

The NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA requires that those evaluations be completed before decisions have been made, not after. The cart (design decision) has been put in front of the horse (environmental studies), and the project is proceeding apace without regard for Federally-mandated processes.

Accordingly, an untenable *fait accompli* has been created in that a Freeway "solution" has been adopted, in advance of the NEPA analyses; and alternatives to that solution have been foreclosed before they have even been identified and evaluated. Pleas to consider less environmentally damaging possibilities have fallen on deaf ears. And there is seemingly an anxiousness to plunge ahead, without regard to following established protocols and without serious consideration of the consequences for the citizens and the community.

9. Roadway safety and congestion does not support the project.

It is our position that the Freeway proposal is contrary to public safety interests. "Safety" criteria for selecting and prioritizing projects to be funded with scarce tax revenue have been ignored in the case of HP. Other Aiken roadways are dramatically less safe than HP, according to SC Department of Public Safety data. For example, considering the statistics for the most recent ten-year period ended December 31, 2013, one Aiken roadway has experienced 20 deaths; another experienced 755 accidents per mile and 290 injuries per mile. The respective figures for HP were zero deaths, 98 accidents and 47 injuries. For a recent four-year period there were 165 accidents reported on HP. This compares with an average of 300 accidents reported on all similar roadways in South Carolina. There are obviously higher and better uses for the money, particularly as driven by what should be the priority accorded roadway safety considerations by Section 57-1-370, SC Code Ann.

This disregard for consideration of roadway safety records in prioritizing the expenditure of scarce tax revenue on transportation projects contradicts the following statements found in SCDOT's *2040 Statewide Multimodal Transportation Plan (SMTP)*, dated August 2014:

"Safety on the State Highway System is the top goal for SCDOT. South Carolina has continued to have one of the highest death rates in the nation." (Executive Summary)

"South Carolina has adopted Target Zero as the state's goal in addressing traffic-related deaths. To this end, the state is gearing its highway safety efforts toward eliminating traffic fatalities rather than merely reducing them . . . the goal of zero fatalities is a noble goal, one our state strives for and a goal with which everyone can live." (Page 22)

To the extent that there are any congested roadways in Aiken, HP is far from the worst. According to the City's own study, that honor falls to a road that is 58% more congested than HP. There are apparently no plans to do anything to "improve" that roadway. The surest method for evaluating roadway performance is travel-time studies. There have been none undertaken to determine just where in Aiken the real problems lie.

10. Absence of adequate planning.

What is "the problem?" SCDOT's proposal to transform HP into a Freeway is a classic case of a solution to a "problem" being implemented before the problem is even well-defined and understood. Said another way, it is a case of a solution anxiously seeking a problem. When it comes to spending large sums of money on public works projects, this approach inevitably leads to disastrous results.

Ready--->Aim--->Fire	NOT	Ready--->Fire---->Aim
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Doesn't it make sense that before government officials would commit to spending tens of millions of dollars on anything, there would be a careful evaluation of a set of possible alternatives, and a rigorous

prioritization process would be followed to determine the highest and best use of scarce tax revenue among competing needs? Businesses generally do not survive without doing that. Regrettably, that bit of common sense has not been applied in this instance.

Where is the evidence of a disciplined and comprehensive planning process? Essentially no serious planning work has been done that we can identify and, as a result, the cart has been put in front of the horse. In other words, a pot of tax revenue has been secured (insufficient as it may be), and without any sort of evaluation of alternative courses of action, a decision has been made to build a costly, unneeded and destructive Freeway. The justifications offered for doing so are constantly changing, and adequate funding has not been secured. Furthermore, it is inconsistent with law.

- The Freeway concept is inconsistent with the *Aiken Comprehensive Land Use and Transportation Plan*.
- The Freeway concept violates the *Aiken 10 Year Capital Improvements Plan* that stipulates that "...before any project is approved, sufficient funding must be identified."
- SC Code of Laws Title 6, Chapter 29, describes local government planning responsibilities, with which there seemingly has not been compliance.

Comprehensive and thoughtful planning studies were recently developed for other road projects in Aiken, including examination and pricing of alternatives. Why has not anything like that been done for the much more costly, complex, destructive and contentious IIP project?

In a letter dated February 7, 2013, from six members of the Aiken Legislative Delegation (Representatives Clyburn, Hixon, Smith, Taylor, Wells and Senator Young) to the SCDOT Secretary, the Freeway proposal was referred to as being predicated on circumstances which may have been extant 20 years ago, and it was urged that a "*targeted-approach*," rather than a Freeway-approach, be adopted "... *in keeping with the character and charm of our beautiful and historic city*"

In contrast to this common-sense appeal to the SCDOT Secretary, City officials have seemingly decided that they want (as opposed to "need") a Freeway-like road encircling Aiken, and they choose not to seriously consider more sensible and practical "solutions" to a "problem" -- which hasn't been adequately defined or studied.

In summary.

Please tell us how we may have notice, an opportunity to be heard, and all legal process which is due as it relates to the IIP project and related funding decisions. The SCTIB should not execute the Ref. B City Agreement to provide public funds for this project without considering and addressing the foregoing concerns. It is our view that if given adequate consideration, the project will fall short of legal requirements. For all of the good and sufficient reasons cited (and more), you are urged to advise SCTIB decision-makers to withdraw any funding offer regarding same.

There is no credible case that can be made for the Freeway, and it fails to meet criteria relating to technical, safety, financial, environmental and aesthetic requirements. My citizen-clients are not opposed to sensible, cost-effective improvements to IIP. However, they are angry and concerned about

the threat presented to their community by the Freeway proposal. They consider it a totally unnecessary mutation of beauty into a beast, and they are not going away. If you have any questions or would otherwise like to discuss this matter, please feel free to call me at 305-807-2082. Thank you for your kind consideration.

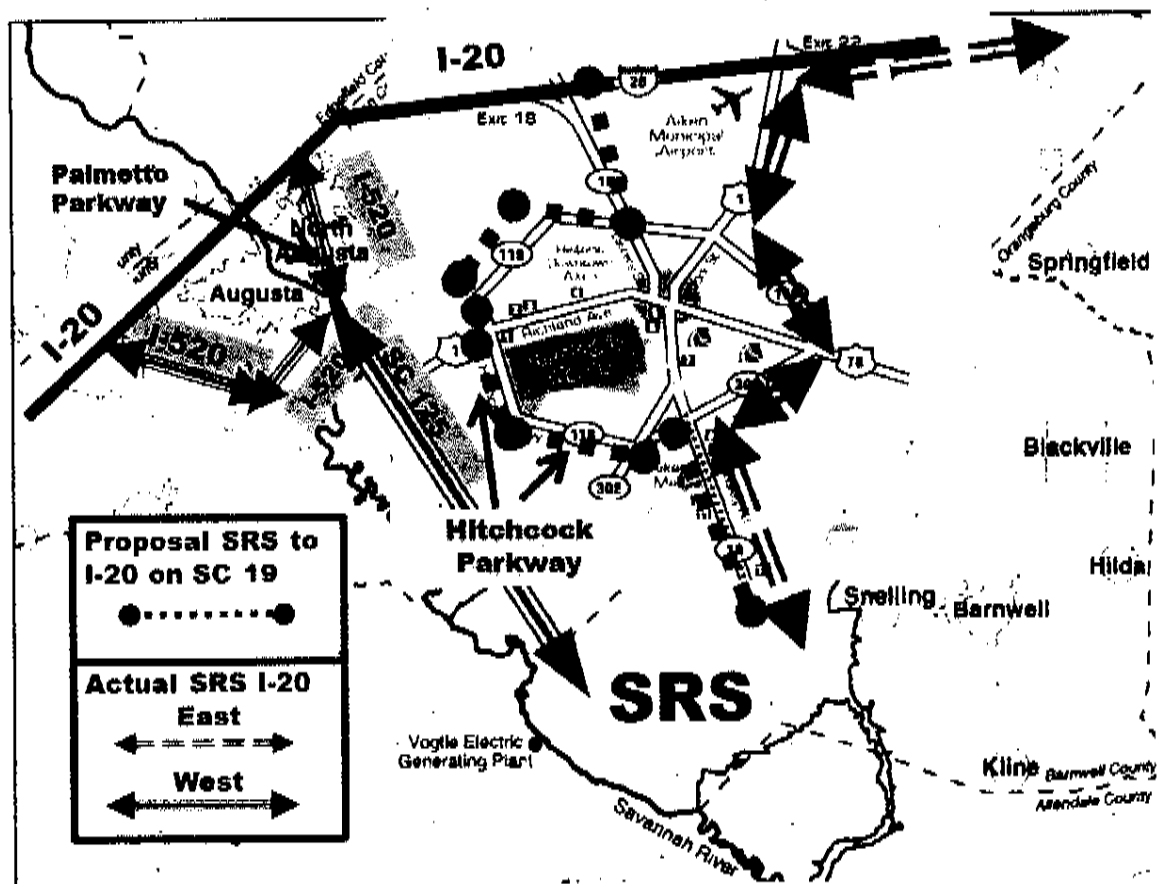
Sincerely,

A handwritten signature in black ink that reads "Dione Carroll". The signature is fluid and cursive, with the first name "Dione" and last name "Carroll" clearly legible.

Dione C. Carroll, Esq.

cc: Aiken City Attorney
Aiken County Attorney

Attachment to 09-17-2014 letter from D.C. Carroll to J. M. Holly
 Subject: Hitchcock Parkway-Aiken



NB: The map above illustrates why a western Freeway loop around Aiken is not needed to provide "improved access from I-20 to SRS." Hundreds of millions of dollars have been spent in the recent past to build:

1. The Palmetto Parkway access, connecting I-20 to SC 125 (Atomic Road), which makes for a four/five lane lightly-traveled corridor to the front door of SRS (the brown route on the left of the map); and
2. The loop around Aiken to the east – an additional four/five lane access consisting of U.S Route 1, Rudy Mason Parkway, and East Pine Log Road (the green route on the right of the map).

Reductions in the SRS work force, amounting to 16,000 positions affecting an estimated 48,000 members of related households, further confirms that "improved access from I-20 to SRS" (the proposed red four/five lane route in the middle of the map) is not a priority the Aiken transportation system needs, particularly in light of all of the other high-priority, transportation-related demands on scarce tax revenue.